UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

301 HOLDING LLC
Employer

- and -

ZUVDIJA RADONCIC
Petitioner

- and - **Case No. 2-RD-1447**

LOCAL 32B-32J, SEIU, AFL-CIO
Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Sonia Monahan, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding[1], it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that 301 Holding LLC, (the Employer) is a New York limited liability company engaged in the ownership and operation of residential buildings, including the building located at 301 East 38th Street, the only facility involved herein. Annually, in the course and conduct of its operations, the Employer derives

gross revenues in excess of $500,000 and purchases and receives at its New York facility goods and materials valued in excess of $50,000 directly from suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Local 32B-32J, SEIU, AFL-CIO (the Intervenor), is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks an election in the existing unit of all full-time and regular part-time doormen, porters, maintenance employees and superintendents at the Employer's 301 East 38th Street facility.

The Intervenor and the Employer stipulated that they were parties to a collective-bargaining agreement, which expired April 20, 2000, and that there has been no successor agreement. It appears that the unit petitioned for is the unit covered by the collective-bargaining agreement and the parties agreed that this unit is appropriate.

The only issue raised at the hearing was whether the Petitioner, a superintendent, is a supervisor as defined by the Act. While the Intervenor rasied this issue initially, it appears from the record that the Intervenor later withdrew from its position that Petitioner was a Section 2(11) supervisor. To the extent it is unclear whether the Intervenor is still contending that Intervenor is a statutory supervisor, it is appropriate to decide Mr. Radoncic's status based upon the record evidence.

Mr. Radoncic's duties consist of repairing and maintaining the building and its apartments. There are other employees employed by the Employer in this building,

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[1] No briefs were filed by any party.

including four doormen and two porters. The record discloses that Mr. Radoncic does not have the authority to hire, fire, or discipline employees, or to recommend such actions.[2] Further, there is no evidence in this record that Mr. Radoncic possesses any other authority enumerated in Section 2(11) of the Act. Therefore, based on the record, I cannot conclude that Intervenor met its burden of establishing that Petitioner is a statuory supervisor. See *Benchmark Mechanical Contractors, Inc*., 327 NLRB No. 151 (1999). I find that the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All full-time and regular part-time doormen, porters, maintenance employees and superintendents at the Employer's 301 East 38th Street facility.
> Excluded: All other employees and supervisors and guards as defined by the Act.

DIRECTION OF ELECTION

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[2] Section 2(11) of the Act defines a supervisor as:

> any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgement.

It is well established that Section 2(11) of the Act must be read in the disjunctive and that an individual therefore need only possess one of these powers for there to be a finding that such status exists. *Concourse Village, Inc*., 278 NLRB 12, 13 (1985). However, the grant of authority must encompass the use of independent judgment on behalf of management. *Hydro Conduit Corp*. 254 NLRB 433, 441 (1981). The party seeking to exclude an individual as a supervisor bears the burden of establishing that such status, in fact, exists. *Ohio Masonic Home, Inc*. 295 NLRB 390, 393 fn. 7 (1989). Mindful that a finding of a supervisory status removes an individual from the protection of the Act, the Board avoids attaching to Section 2(11) too broad a construction. *Adco Electric, Inc.,* 307 NLRB 1113, 1120 (1992), enfd. 6 F.3d 1110 (5th Cir. 1993). The Board has noted that, in enacting Section 2(11) of the Act, congress stressed that only persons with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen …. And other minor supervisory employees." *Chicago Metallic Corp*., 273 NLRB 1677 (1985) (citing Senate Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)), aff'd in relevant part 794 F.2d 527 (9th Cir. 1986). Thus, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.[3] Eligible to vote are those in the unit were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[4] Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Local 32B-32J, SEIU, AFL-CIO..[5]

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supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

[3] Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held that Section 103.20 (c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

[4] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional

Dated at New York, New York
May 26, 2000

(s) *Daniel Silverman*

Daniel Silverman
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Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **JUNE 2, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

5 Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **June 9, 2000.**